BALTIMORE AND OHIO RAILROAD COMPANY *v.* HOSTETTER.

ERROR TO THE CIRCUIT COURT OF MARION COUNTY, STATE OF WEST VIRGINIA.

No. 245. Submitted January 25, 1916.—Decided April 10, 1916.

The wages of an employee residing in West Virginia having been garnisheed in the hands of his employer in Virginia, judgment was entered without notice to the employee, none being required under the Virginia statute, and paid by the garnishee; the employee then sued for his wages in West Virginia and the courts of that State refused to enforce the Virginia judgment for want of service; *held* error and that under the full faith and credit provision of the Federal Constitution the judgment of the Virginia court protected the garnishee.

THE facts, which involve the construction and application of the full faith and credit provision of the Constitution of the United States, are stated in the opinion.

Mr. George E. Hamilton, *Mr. Francis R. Cross* and *Mr. A. Hunter Boyd, Jr.*, for plaintiff in error:

When a creditor of the garnishee's creditor has obtained a judgment against the garnishee debtor in accordance with the laws of the place where the garnishee debtor was personally served, then the garnishee debtor may plead this judgment as a defense to a suit by his own creditor in another jurisdiction, provided he was not negligent in giving his own creditor notice of the attachment proceeding, so that he might have had the opportunity to defend himself. *Chi. &c. Rock Island Ry.* v. *Sturm*, 174 U. S. 710; *Harris* v. *Balk*, 198 U. S. 215; *Louis. & Nash. R. R.* v. *Deer*, 200 U. S. 176.

U. S. Argument for Defendant in Error.

Mr. W. H. Conaway and *Mr. Harry A. Shaw* for defendant in error:

mission to show in the return of service that it was in county where the agent resides renders the service lid, and in such case the court obtains no jurisdiction e res, for want of service on the garnishee; nor can garnishee accept or waive service.

oluntary appearance by garnishee does not confer diction, nor can he give jurisdiction by voluntary arance, when not previously served with the order of hment, nor where an attempted service is invalid. *Co. v. Rogers*, 52 W. Va. 451.

here defendant is a non-resident and cannot be d, jurisdiction of the fund attached cannot be acd by service of process on the garnishee in Virginia. *v. Rohr*, 82 Virginia, 259; Va. Code, § 2979; *Bickle herisman*, 76 Virginia, 691; *Roberts v. Hickory Co.*, . Va. 276.

e proper place to attach by garnishment is at the (and State) of the residence of the debtor. Sams on hment, p. 207; *Roller v. Murray*, 71 W. Va. 161.

domestic corporation cannot be garnisheed in another diction by service upon an agent for debts owing by a home creditor, over whose person jurisdiction is equired. *Douglas v. Phœnix Ins. Co.*, 138 N. Y. 209; *rd v. Chaffee*, 61 Nebraska, 83; *Balk v. Harris*, 30 Rep. 318.

emption of wages by the law of the State in which is esidence of both debtor and creditor and the place the wages are payable cannot be defeated by garnishpending in another State, although the debtor is road corporation which has a residence also in such State. *Ill. Cent. R. R. v. Smith*, 19 L. R. A. 577; so *Singer Mfg. Co. v. Fleming*, 23 L. R. A. 240; *Amer-Co. v. Ins. Co.*, 10 Am. Rep. 522.

ourt has no power to render a judgment condemning

bt, in a garnishment proceeding, where the situs of ebt is not within the jurisdiction of the court. *Georgia r. Brinson*, 77 Am. Rep. 382; *Buckeye Co.* v. *Fee*, 78 Rep. 743; *Louis. & Nash. R. R.* v. *Nash*, 72 Am. Rep. *Balk* v. *Harris*, 70 Am. Rep. 606.

r. CHIEF JUSTICE WHITE delivered the opinion of ourt.

ostetter, the defendant in error, a resident of West nia, sued in a justice's court in that State for wages im by the Railroad Company, now plaintiff in error. defense was that the wages had been paid by the oad Company as the result of a garnishment pro- ng taken against it in the State of Virginia where it suable to enforce a judgment rendered in Virginia st Hostetter when he resided in that State and after nieiliary service on him. The case went from the e's court for a *de novo* trial to the intermediate court arion County where as the result of a verdict against Railroad Company it was condemned to pay again, ourt holding that the Virginia garnishment proceed- vas not entitled to be enforced as against Hostetter r the full faith and credit clause of the Constitution of nited States because he was not served with process ch proceeding, he then residing in West Virginia, al- gh extra-judicial notice was given him by the Rail- Company of the proceeding. The case is here on of error to review the judgment of the court below ning that of the intermediate court, and whether r force was given to the full faith and credit clause question for decision.

is true that in the argument for the defendant in various suggestions are made as to the insufficiency e record concerning the existence of the Virginia ment upon which reliance on the full faith and credit

e was placed on the ground that the record contains
recitals with reference to the judgment, etc., etc.
he sake of brevity we do not stop to review these
stions, although we have considered them all, since
ink they are not only without merit but many of
are in effect frivolous because in our opinion the
l suffices to establish the facts which were stated by
ourt below as the basis for its judgment, and which
riefly recapitulate as follows:
e plaintiff in July, 1911, resided at Clifton Forge,
nia, and was indebted to one Wagner in the sum of
for which debt Wagner obtained a judgment against
n a justice's court of Virginia based upon a summons
d "on said plaintiff . . . by delivering a copy
of to the wife of the plaintiff at his usual place of
e. . . . Said record further shows . . . that
ne 17th day of September, 1912, a garnishee sum-
was issued by H. H. Harlow, a Justice of the Peace
e City of Staunton, Virginia, . . . which gar-
e summons was directed against the said Baltimore
Ohio Railroad Company . . . charging that
l money, or other personal estate, in its possession
ntrol belonging to the said Hostetter, and requiring
aid Railroad Company to appear . . . to answer
garnishment or suggestion; . . . and that on
rd day of October, 1912, said justice last above named
ered a judgment against the said Hostetter and the
more and Ohio Railroad Company in favor of the
Wagner in the sum of $38.40, with interest. . . .
is garnishment or suggestion proceeding, no notice
ocess of any kind was given to or served upon the
Hostetter, he then being a resident of this State
Virginia], and had been such resident for more
a year previous to the date of the institution of the
shment proceeding. From this said last-named
ment the Baltimore and Ohio Railroad Company

o the Corporation Court of the City of Staunton.
ppeal was heard and passed upon by said court
h day of February, 1913. So far as the record
notice of such proceeding in the courts of Vir-
given to the defendant until on or about the
of February, 1913, when the said Railroad
did notify, in writing, the said Hostetter of
ency of the said garnishment proceedings on
said Corporation Court. . . . It is not
that any formal notice was given to said
of the garnishment proceedings for the reason
statute of Virginia under which said proceeding
ated does not require notice to be given a non-
that State of the pendency of the garnishment
ion."

h the railroad had paid in virtue of the judg-
dered in the garnishment proceeding taken as
ed, the court agreeing in opinion as we have said
rial court, held that the garnishment proceeding
dgment in it were no protection to the Railroad
because there was no power in the Virginia
garnishee in that State in the hands of the rail-
of money due by it to an employee domiciled
State without service on such employee in
nd that the full faith and credit clause imposed
enforce a judgment in garnishment proceed-
d with the want of power stated.

of the decisions of this court dealing with the
ation here presented and expressly holding
rinciples upon which the court below based its
e erroneous and could not be upheld consist-
the duty to apply and enforce the full faith
clause, we need do no more than cite the cases
Chicago, R. I. & P. Ry. v. *Sturm*, 174 U. S.
v. *Ball*, 198 U. S. 215; *Louis. & Nash. R. R.* v.
U. S. 176.

hat the judgment below in so far as it ilroad to pay the second time the sum scharged under the Virginia judgment must be reversed and the case remanded edings not inconsistent with this opinion.

And it is so ordered.